IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1145 OF 2005
IN
SUIT NO.1656 OF 2003

M/s.Reifenhauser GmbH & Co. ....Plaintiff
V/s.
M/s.Unimin India Ltd. ....Defendant

Mr.Prateek Sekseria with Mr.Ali i/b Law Charter for the Defendant in support of the Chamber Summons.

Ms.R.Sauliwala i/b Dhru Liladhar & Co. for the Plaintiff to show cause.

CORAM : S.J. VAZIFDAR, J.
DATED : 12TH APRIL, 2006.

P.C. :

1. After the matter was heard, I was requested by both counsel to reserve the matter for orders as they desired to settle the matter. This request was renewed from time to time. I am now informed that the settlement has not materialized.

2. This is the Defendant's Chamber Summons to revoke the leave granted by this Court on 19.4.2003 under Clause 12 of the Letters Patent.

3. The suit is filed to recover an amount of Rs.48,19,46,626=32 ps. together with interest at

6.825 % p.a.

4. The suit is based on an agreement dated 2.2.1994 (Exhibit "A" to the plaint). The Plaintiff's contention is that the same was modified by a writing dated 30.5.1995 (Exhibit "B" to the plaint). The Plaintiff's case is that Exhibit "A" to the plaint constituted a contract between the parties. It is a letter purporting to be an "order confirmation" bearing No.1/2484/94/6.2. The same sets out various terms and conditions on which the Plaintiff was to supply one U.L.T. SINGLE-BEAM-REICOFIL plant for the production of spun bonded heat-sealed nonwovens, 3200 mm width with 2-roll calender of the specimens mentioned therein. Enclosed along with the order confirmation were two attachments - I and II which were stated to be an integral part of the order confirmation. Admittedly, the Plaintiff signed the same and forwarded it to the Defendant. Admittedly again the Defendant at the foot of the letter made the following endorsement in Bombay i.e. within the jurisdiction of this Court :

> "We hereby confirm our order and declare our approval of your order confirmation.
>
> Place : Bombay

Date : February 10, 1994

Sd/-"

5. The Plaintiff's case is that thereafter discussions ensued between the parties pursuant to which certain terms and conditions regarding the schedule of payments were altered. I will assume that the terms and conditions were altered. The Plaintiff's further case is that accordingly i.e. pursuant to the said subsequent negotiations, it issued the final order confirmation dated 30.5.1995 (Exhibit "B" to the plaint). This according to the Plaintiff was only a modification to Exhibit "A" i.e. order confirmation.

6. The Plaintiff sought and obtained leave under Clause 12 of the Letters Patent on the basis that the order confirmation dated 2.2.1994 (Exhibit "A" to the plaint) was signed and accepted by the Defendant at Bombay. The same constituted a material part of the cause of action which has arisen in Bombay.

7. The Defendant confirmed the order dated 2.2.1994 in Bombay on 10.2.1994. These facts certainly brought into existence an agreement. If the agreement is deemed to have been entered into in Bombay, there can be no doubt that a material part of

the cause of action has arisen in Bombay. The subsequent modifications were to the main agreement and therefore would not alter the fact that the main agreement, subject to the alteration/modification, is the agreement between the parties and thereby a material part of the cause of action. It is important to note that Exhibit "B" which according to the Defendant was the final contract itself opens with the endorsement "ORDER CONFIRMATION No.1/2484/94/6.2 which is the order confirmation number ascribed to the agreement Exhibit "A".

8. The contract having been entered into by postal communication and the Defendant having accepted the same in Mumbai and posted its acceptance in Mumbai, the contract is deemed, for the purpose of jurisdiction, to have been entered into in Mumbai. (See *Bhagwandas Goverdhandas Kedia v. M/s.Girdharlal Purshottamdas & Co., AIR 1966 Supreme Court 543*.)

9. In the circumstances, this Court would have jurisdiction on leave being granted under Clause 12 of the Letters Patent. Leave was granted.

10. Mr.Sekseria, the leaned counsel appearing on behalf of the Defendant however submitted that Exhibit

"A" by itself does not furnish a cause of action to enable the Plaintiff to maintain the suit. The submission is not well founded. It clearly does as it contains the essential terms and conditions of the contract. Mr.Sekseria was unable to show me that the contract even if confined to Exhibit "A" is not workable. There is nothing to suggest that it was merely an agreement to enter into an agreement.

11. In the circumstances, the Chamber Summons is dismissed.

. Costs costs in the cause.